

IMPLEMENTING SECTION 33 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 RELATIVE TO THE SPECIAL TREATMENT OF FRINGE BENEFITS

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Pursuant to Section 244, in relation to Section 33 of the National Internal Revenue Code of 1997, these Regulations are hereby promulgated to govern the collection at source of the tax on fringe benefits which have been furnished, granted or paid by the employer beginning January 1, 1998.

SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS

(A) Imposition of Fringe Benefits Tax — A final withholding tax is hereby imposed on the grossed-up monetary value of fringe benefit furnished, granted or paid by the employer to the employee, except rank and file employees as defined in these Regulations, whether such employer is an individual, professional partnership or a corporation, regardless of whether the corporation is taxable or not, or the government and its instrumentalities except when: (1) the fringe benefit is required by the nature of or necessary to the trade, business or profession of the employer; or (2) when the fringe benefit is for the convenience or advantage of the employer. The fringe benefit tax shall be imposed at the following rates:

Effective January 1, 1998 - 34%

Effective January 1, 1999 - 33%

Effective January 1, 2000 - 32%

The tax imposed under Sec. 33 of the Code shall be treated as a final income tax on the employee which shall be withheld and paid by the employer on a calendar quarterly basis as provided under Sec. 57 (A) (Withholding of Final Tax on certain Incomes) and Sec. 58 A (Quarterly Returns and Payments of Taxes Withheld) of the Code.

The grossed-up monetary value of the fringe benefit shall be determined by dividing the monetary value of the fringe benefit by the following percentages and in accordance with the following schedule:

Effective January 1, 1998 - 66%

Effective January 1, 1999 - 67%

Effective January 1, 2000 - 68%

The grossed-up monetary value of the fringe benefit represents the whole amount of income realized by the employee which includes the net amount of money or net monetary value of property which has been received plus the amount of fringe benefit tax thereon otherwise due from the employee but paid by the employer for and in behalf of his employee, pursuant to the provisions of this Section.

Coverage — These Regulations shall cover only those fringe benefits given or furnished to managerial or supervisory employees and not to the rank and file.

The term, "RANK AND FILE EMPLOYEES" means all employees who are holding neither managerial nor supervisory position. The Labor Code of the Philippines, as amended, defines "managerial employee" as one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer,

suspend, lay-off, recall, discharge, assign or discipline employees. "Supervisory employees" are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment.

Moreover, these regulations do not cover those benefits properly forming part of compensation income subject to withholding tax on compensation in accordance with Revenue Regulations No. 2-98.

Fringe benefits which have been paid prior to January 1, 1998 shall not be covered by these Regulations.

Determination of the Amount Subject to the Fringe Benefit Tax — In general, the computation of the fringe benefits tax would entail (a) valuation of the benefit granted and (b) determination of the proportion or percentage of the benefit which is subject to the fringe benefit tax. That the Tax Code allows for the cases where only a portion (i.e. less than 100 per cent) of the fringe benefit is subject to the fringe benefit tax is clearly stated in Section 33 (a) of R.A. 8424 which stipulates that fringe benefits which are "required by the nature of, or necessary to the trade, business or profession of the employer, or when the fringe benefit is for the convenience or advantage of the employer" are not subject to the fringe benefit tax. Thus, in cases where the fringe benefits entail joint benefits to the employer and employee, the portion which shall be subject to the fringe benefits tax and the guidelines for the valuation of fringe benefits are defined under these rules and regulations.

Unless otherwise provided in these regulations, the valuation of fringe benefits shall be as follows:

- (1) If the fringe benefit is granted in money, or is directly paid for by the employer, then the value is the amount granted or paid for.
- (2) If the fringe benefit is granted or furnished by the employer in property other than money and ownership is transferred to the employee, then the value of the fringe benefit shall be equal to the fair market value of the property as determined in accordance with Sec. 6 (E) of the Code (Authority of the Commissioner to Prescribe Real Property Values).
- (3) If the fringe benefit is granted or furnished by the employer in property other than money but ownership is not transferred to the employee, the value of the fringe benefit is equal to the depreciation value of the property.

Taxation of fringe benefit received by a non-resident alien individual who is not engaged in trade or business in the Philippines — A fringe benefit tax of twenty-five percent (25%) shall be imposed on the grossed-up monetary value of the fringe benefit. The said tax base shall be computed by dividing the monetary value of the fringe benefit by seventy-five per cent (75%).

Taxation of fringe benefit received by (1) an alien individual employed by regional or area headquarters of a multinational company or by regional operating headquarters of a multinational company; (2) an alien individual employed by an offshore banking unit of a foreign bank established in the Philippines; (3) an alien individual employed by a foreign service contractor or by a foreign service subcontractor engaged in petroleum operations in the Philippines; and (4) any of their Filipino individual employees who are employed and occupying the same position as those occupied or held by the alien employees. — A fringe benefit tax of fifteen per cent (15%) shall be imposed on the grossed-up monetary value of the fringe benefit. The said tax base shall be computed by dividing the monetary value of the fringe benefit by eighty-five per cent (85%).

Taxation of fringe benefit received by employees in special economic zones — Fringe benefits received by employees in special economic zones, including Clark Special Economic Zone and Subic Special Economic and Free Trade Zone, are also covered by these regulations and subject to the normal rate of fringe benefit tax or the special rates of 25% or 15% as provided above.

(B) Definition of Fringe Benefit — In general, except as otherwise provided under these regulations, for purposes of this Section, the term "FRINGE BENEFIT" means any good, service, or other benefit furnished or granted by an employer in cash or in kind, in addition to basic salaries, to an individual employee (except rank and file employee as defined in these regulations) such as, but not limited to the following:

- (1) Housing;
- (2) Expense account;
- (3) Vehicle of any kind;
- (4) Household personnel, such as maid, driver and others;
- (5) Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
- (6) Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
- (7) Expenses for foreign travel;
- (8) Holiday and vacation expenses;
- (9) Educational assistance to the employee or his dependents; and
- (10) Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

For this purpose, the guidelines for valuation of specific types of fringe benefits and the determination of the monetary value of the fringe benefits are give below. The taxable value shall be the grossed-up monetary value of the fringe benefit.

1. Housing privilege —

(a) If the employer leases a residential property for the use of his employee and the said property is the usual place of residence of the employee, the value of the benefit shall be the amount of rental paid thereon by the employer, as evidenced by the lease contract. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

(b) If the employer owns a residential property and the same is assigned for the use of his employee as his usual place of residence, the annual value of the benefit shall be five per cent (5%) of the market value of the land and improvement, as declared in the Real Property Tax Declaration Form, or zonal value as determined by the Commissioner pursuant to Section 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

The monetary value of the housing fringe benefit is equivalent to the following:

$$MV = [5\% (\text{FMV or ZONAL VALUE})] \times 50\%$$

WHERE:

MV = MONETARY VALUE

FMV = FAIR MARKET VALUE

(c) If the employer purchases a residential property on installment basis and allows his employee to use the same as his usual place of residence, the annual value of the benefit shall be five per cent (5%) of the acquisition cost, exclusive of interest. The monetary value of fringe benefit shall be fifty per cent (50%) of the value of the benefit.

(d) If the employer purchases a residential property and transfers ownership thereof in the name of the employee, the value of the benefit shall be the employer's acquisition cost or zonal value as determined by the Commissioner pursuant to Section 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher. The monetary value of the fringe benefit shall be the entire value of the benefit.

(e) If the employer purchases a residential property and transfers ownership thereof to his employee for the latter's residential use, at a price less than the employer's acquisition cost, the value of the benefit shall be the difference between the fair market value, as declared in the Real Property Tax Declaration Form, or zonal value as determined by the Commissioner pursuant to Sec. 6(E) of the Code (Authority of the Commissioner to Prescribe Real Property Values), whichever is higher, and the cost to the employee. The monetary value of the fringe benefit shall be the entire value of the benefit.

(f) Housing privilege of military officials of the Armed Forces of the Philippines (AFP) consisting of officials of the Philippine Army, Philippine Navy and Philippine Air Force shall not be treated as taxable fringe benefit in accordance with the existing doctrine that the State shall provide its soldiers with necessary quarters which are within or accessible from the military camp so that they can be readily on call to meet the exigencies of their military service.

(g) A housing unit which is situated inside or adjacent to the premises of a business or factory shall not be considered as a taxable fringe benefit. A housing unit is considered adjacent to the premises of the business if it is located within the maximum of fifty (50) meters from the perimeter of the business premises.

(h) Temporary housing for an employee who stays in a housing unit for three (3) months or less shall not be considered a taxable fringe benefit.

2. Expense account —

(a) In general, expenses incurred by the employee but which are paid by his employer shall be treated as taxable fringe benefits, except when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the employee.

(b) Expenses paid for by the employee but reimbursed by his employer shall be treated as taxable benefits except only when the expenditures are duly receipted for and in the name of the employer and the expenditures do not partake the nature of a personal expense attributable to the said employee.

(c) Personal expenses of the employee (like purchases of groceries for the personal consumption of the employee and his family members) paid for or reimbursed by the employer to the employee shall be treated as taxable fringe benefits of the employee whether or not the same are duly receipted for in the name of the employer.

(d) Representation and transportation allowances which are fixed in amounts and are regular received by the employees as part of their monthly compensation income shall not be treated as taxable fringe benefits but the same shall be considered as taxable compensation income subject to the tax imposed under Sec. 24 of the Code.

3. Motor vehicle of any kind —

(a) If the employer purchases the motor vehicle in the name of the employee, the value of the benefit is the acquisition cost thereof. The monetary value of the fringe benefit shall be the entire value of the benefit, regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the

benefit of his employer.

(b) If the employer provides the employee with cash for the purchase of a motor vehicle, the ownership of which is placed in the name of the employee, the value of the benefits shall be the amount of cash received by the employee. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer, unless the same was subjected to a withholding tax as compensation income under Revenue Regulations No. 2-98.

(c) If the employer purchases the car on installment basis, the ownership of which is placed in the name of the employee, the value of the benefit shall be the acquisition cost exclusive of interest, divided by five (5) years. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

(d) If the employer shoulders a portion of the amount of the purchase price of a motor vehicle the ownership of which is placed in the name of the employee, the value of the benefit shall be the amount shouldered by the employer. The monetary value of the fringe benefit shall be the entire value of the benefit regardless of whether the motor vehicle is used by the employee partly for his personal purpose and partly for the benefit of his employer.

(e) If the employer owns and maintains a fleet of motor vehicles for the use of the business and the employees, the value of the benefit shall be the acquisition cost of all the motor vehicles not normally used for sales, freight, delivery service and other non-personal used divided by five (5) years. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

The monetary value of the motor vehicle fringe benefit is equivalent to the following:

$$MV = [(A)/5] \times 50\%$$

where:

MV = Monetary value

A = acquisition cost

(f) If the employer leases and maintains a fleet of motor vehicles for the use of the business and the employees, the value of the benefit shall be the amount of rental payments for motor vehicles not normally used for sales, freight, delivery, service and other non-personal use. The monetary value of the fringe benefit shall be fifty per cent (50%) of the value of the benefit.

(g) The use of aircraft (including helicopters) owned and maintained by the employer shall be treated as business use and not be subject to the fringe benefits tax.

(h) The use of yacht whether owned and maintained or leased by the employer shall be treated as taxable fringe benefit. The value of the benefit shall be measured based on the depreciation of a yacht at an estimated useful life of 20 years.

4. Household expenses — Expenses of the employee which are borne by the employer for household personnel, such as salaries of household help, personal driver of the employee, or other similar personal expenses (like payment for homeowners association dues, garbage dues, etc.) shall be treated as taxable fringe benefits.

5. Interest on loan at less than market rate

(a) If the employer lends money to his employee free of interest or at a rate lower than twelve per cent (12%), such interest foregone by the employer or the difference of the interest assumed by the employee and the rate of twelve per cent (12%) shall be treated as a taxable fringe benefit.

(b) The benchmark interest rate of twelve per cent (12%) shall remain in effect until revised by a subsequent regulation.

(c) This regulation shall apply to installment payments or loans with interest rate lower than twelve per cent (12%) starting January 1, 1998.

6. Membership fees, dues, and other expenses borne by the employer for his employee, in social and athletic clubs or other similar organizations. — These expenditures shall be treated as taxable fringe benefits of the employee in full.

7. Expenses for foreign travel —

(a) Reasonable business expenses which are paid for by the employer for the foreign travel of his employee for the purpose of attending business meetings or conventions shall not be treated as taxable fringe benefits. In this instance, inland travel expenses (such as expenses for food, beverages and local transportation) except lodging cost in a hotel (or similar establishments) amounting to an average of US\$300.00 or less per day, shall not be subject to a fringe benefit tax. The expenses should be supported by documents proving the actual occurrences of the meetings or conventions.

The cost of economy and business class airplane ticket shall not be subject to a fringe benefit tax. However, 30 percent of the cost of first class airplane ticket shall be subject to a fringe benefit tax.

(b) In the absence of documentary evidence showing that the employee's travel abroad was in connection with business meetings or conventions, the entire cost of the ticket, including cost of hotel accommodations and other expenses incident thereto shouldered by the employer, shall be treated as taxable fringe benefits. The business meetings shall be evidenced by official communications from business associates abroad indicating the purpose of the meetings. Business conventions shall be evidenced by official invitations/communications from the host organization or entity abroad. Otherwise, the entire cost thereof shouldered by the employer shall be treated as taxable fringe benefits of the employee.

(c) Travelling expenses which are paid by the employer for the travel of the family members of the employee shall be treated as taxable fringe benefits of the employee.

8. Holiday and vacation expenses — Holiday and vacation expenses of the employee borne by his employer shall be treated as taxable fringe benefits.

9. Educational assistance to the employee or his dependents —

(a) The cost of the educational assistance to the employee which are borne by the employer shall, in general, be treated as taxable fringe benefit. However, a scholarship grant to the employee by the employer shall not be treated as taxable fringe benefit if the education or study involved is directly connected with the employer's trade, business or profession, and there is a written contract between them that the employee is under obligation to remain in the employ of the employer for period of time that they have mutually agreed upon. In this case, the expenditure shall be treated as incurred for the convenience and furtherance of the employer's trade or business.

(b) The cost of educational assistance extended by an employer to the dependents of an employee shall be treated as taxable fringe benefits of the employee unless the assistance was provided through a competitive scheme under the scholarship program of the company.

10. Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows — The cost of life or health insurance and other non-life insurance premiums borne by the employer for his employee shall be treated as taxable fringe benefit, except the following: (a) contributions of the employer for the benefit of the employee, pursuant to the provisions of existing law, such as under the Social Security System (SSS), (R.A. No. 8282, as amended) or under the Government Service Insurance System (GSIS) (R.A. No. 8291), or similar contributions arising from the provisions of any other existing law; and (b) the cost of premiums borne by the employer for the group insurance of his employees.

(C) Fringe Benefits Not Subject to Fringe Benefits Tax — In general, the fringe benefits tax shall not be imposed on the following fringe benefits:

1. Fringe benefits which are authorized and exempted from income tax under the Code or under any special law;
2. Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans;
3. Benefits given to the rank and file, whether granted under a collective bargaining agreement or not;
4. De minimis benefits as defined in these Regulations;
5. If the grant of fringe benefits to the employee is required by the nature of, or necessary to the trade, business or profession of the employer; or
6. If the grant of the fringe benefit is for the convenience of the employer.

The exemption of any fringe benefit from the fringe benefit tax imposed under this Section shall not be interpreted to mean exemption from any other income tax imposed under the Code except if the same is likewise expressly exempt from any other income tax imposed under the Code or under any other existing law. Thus, if the fringe benefit is exempted from the fringe benefits tax, the same may, however, still form part of the employee's gross compensation income which is subject to income tax, hence, likewise subject to a withholding tax on compensation income payment.

The term "DE MINIMIS" benefits which are exempt from the fringe benefit tax shall, in general, be limited to facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees such as the following:

1. Monetized unused vacation leave credits of employees not exceeding ten (10) days during the year;
2. Medical cash allowance to dependents of employees not exceeding P 750 per semester or P 125 per month;
3. Rice subsidy of P 350 per month granted by an employer to his employees;
4. Uniforms given to employees by the employer;
5. Medical benefits given to the employees by the employer;
6. Laundry allowance of P 150 per month;
7. Employee achievement awards, e.g. for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding one-half ($\frac{1}{2}$) month of the basic salary of the employee receiving the award under an established written plan which does not discriminate in favor of highly paid employees;

8. Christmas and major anniversary celebrations for employees and their guests;
9. Company picnics and sports tournaments in the Philippines and are participated exclusively by employees; and
10. Flowers, fruits, books or similar items given to employees under special circumstances, e.g. on account of illness, marriage, birth of a baby, etc.

(D) Tax Accounting for the Fringe Benefit Furnished to the Employee and the Fringe Benefit Tax Due Thereon — As a general rule, the amount of taxable fringe benefit and the fringe benefits tax shall constitute allowable deductions from gross income of the employer. However, if the basis for computation of the fringe benefits tax is the depreciation value, the zonal value as determined by the Commissioner pursuant to Section 6(E) of the Code or the fair market value as determined in the current real property tax declaration of a certain property, only the actual fringe benefits tax paid shall constitute a deductible expense for the employer. The value of the fringe benefit shall not be deductible and shall be presumed to have been tacked on or actually claimed as depreciation expense by the employer.

Provided, however, that if the aforesaid zonal value or fair market value of the said property is greater than its cost subject to depreciation, the excess amount shall be allowed as a deduction from the employer's gross income as fringe benefit expense.

Illustrations on fringe benefit furnished or granted by the employer to an employee (other than a rank-and-file employee)

1. During the year 1998, ABC Corporation paid for the monthly rental of a residential house of its branch manager (Mr. Dela Cruz) amounting to P 66,000.00.

In this case, the monthly taxable grossed-up monetary value of the said fringe benefit furnished or granted to its branch manager (Mr. Dela Cruz) shall be P 50,000.00, computed as follows:

Monthly rental for the residential house P 66,000.00
Grossed-up monetary benefit granted
(P 66,000.00 divided by 66% factor for
calendar year 1998 times 50% taxable portion) P 50,000.00

Fringe benefit tax due thereon (34%) P 17,000.00

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ABC Corporation shall take up in its books of accounts the P 66,000.00 fringe benefit furnished to Mr. Dela Cruz, under account title "Fringe Benefit Expense" and the amount of 17,000.00 under the account title "Fringe Benefit Tax Expense". The aforesaid amounts shall be fully allowed as deductions from the gross income of ABC Corporation and shall be taken up in the said employer's books of accounts as follows:

Debit: Fringe Benefit Expenses P 66,000
Debit: Fringe Benefit Tax Expense P 17,000

Credit: Cash P 83,000

To record fringe benefit expense and fringe benefit tax paid on rental of the residential property furnished to Mr. Dela Cruz for his residential use. (Note: If the fringe benefit expense of P 66,000.00 has already accrued but not yet paid, use the account title "fringe benefit payable". If the fringe benefit tax has already accrued but not yet paid, use the account title "fringe benefit tax payable").

2. XYZ Corporation owns a condominium unit. During the year 1998, the said corporation furnished and granted the said property for the residential use of its Assistant Vice-President. The fair market value of the said property as determined by the Commissioner pursuant to Section 6(E) of the Code amounts P 10,000,000.00 while its fair market value as shown in its current Real Property Tax Declaration amounts to P 8,000,000.00. In this case, the higher fair market value of P 10,000,000.00 as determined by the Commissioner shall be used in computing the monetary of the fringe benefit so furnished or granted to said employee and the fringe benefit tax due thereon shall be computed as follows:

Monthly rental value of the property
(P 10,000,000 times 5% thereof times 50%
divided by 12 months) P 20,833.33

Grossed-up monetary value thereof as fringe
benefit (P 20,833.33 divided by 66% factor for
calendar year 1998) P 31,565.66

Fringe Benefit tax due thereon (34%) P 10,732.32

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In general, under this illustration, the XYZ Corporation shall not further claim deduction for allowing its Assistant Vice-President the use of its residential property since the cost for the use thereof has already been recovered as deduction from its gross income under "Depreciation Expense". However, since the fringe benefit tax in the amount of P 10,732.32, assumed and paid by XYZ corporation has not as yet been recovered by way of deduction from gross income, the same shall be allowed as a deduction from its gross income. XYZ Corporation shall take up the foregoing in its books of accounts, as follows:

Debit: Fringe Benefit Tax Expense P 10,732.32

Credit: Cash/Fringe Benefit Tax Payable P 10,732.32

To record fringe benefit tax expense for the residential property furnished to employees.

However, if the cost of the aforesaid condominium unit subject to depreciation allowance (example: its acquisition cost is only P 7,000,000.00) is lesser than its fair market value as determined by the Commissioner (i.e. P 10,000,000.00), the excess amount (i.e. P 3,000,000.00) shall be amortized throughout the remaining estimated useful life of the residential property used in computing the said employer's depreciation expense and allowed as a deduction from the said employer's gross income as fringe benefit expense. Thus, if the remaining estimated useful life thereof during the year 1998 is fifteen (15) years, its monthly amortization shall be computed as follows:

Monthly amortization (P 3,000,000.00 divided by 15 years divided by 12 months) P 16,666.67

In this case, XYZ Corporation shall take up the foregoing in its books of accounts as follows:

Debit: Fringe benefit expense P 16,666.67

Debit: Fringe benefit tax P 10,732.32

Credit: Income constructively realized P 16,666.67

Credit: Cash/Fringe benefit tax payable P 10,732.32

To record fringe benefit and fringe benefit tax expenses and income constructively realized from the use of

company-owned residential property furnished to employees.

Repealing Clause — All existing rules and regulations or parts thereof which are inconsistent with the provisions of these regulations are hereby revoked.

Effectivity — These regulations shall take effect on fringe benefits furnished, granted or paid beginning January 1, 1998.

Transitory Provisions — No penalty shall be imposed for late payment of the fringe benefit tax for the first quarter ending March 1998: Provided, however, that the withholding tax return for the first quarter shall be filed and the tax is paid not later than July 25, 1998.

Adopted: 21 May 1998

(SGD.) SALVADOR M. ENRIQUEZ, JR.
Secretary

Recommending Approval:

(SGD.) LIWAYWAY VINZONS-CHATO
Commissioner of Internal Revenue

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